

**NATURAL RESOURCES BOARD AGENDA ITEM**

Item No. 3.A.2.

**SUBJECT:** Adoption of Proposed Amendments to chs. NR 406, 407 and 410 implementing s. 285.60(6)(b), Stats., to exempt certain minor air pollution sources from construction and operation permit requirements (AM-09-06).

**FOR:** August 2006 BOARD MEETING

**TO BE PRESENTED BY:** Caroline Garber

**SUMMARY:** The Natural Resources Board authorized public hearings on the proposed rule at its April 2006 meeting. Three hearings were held in June 2006.

The proposed rule changes contain the following three elements:

1. Exemption of all sources which have actual air emissions of criteria pollutants of less than 10 tons/year, and which are not subject to additional control requirements such as Federal hazardous air pollutant standards, from all air permitting requirements.
2. Exemption of any project at a source which will have actual air emissions of criteria pollutants of less than 10 tons/year, and which is not subject to additional control requirements such as Federal hazardous air pollutant standards, from air construction permitting requirements
3. Add an \$800 exemption review fee for all projects which claim exemption under item 2.

These changes are being proposed to meet statutory requirements of s. 285.60(6)(b), Wis. Stats., (part of 2003 Wisconsin Act 118), which requires the Department to exempt sources which are not a risk to human health or the environment from air permitting requirements.

Prior to this rule package, the Board has not dealt with the general issue of permit exemptions since the early 1990s when the Federal operation permit program was established. At that time, the existing construction permit exemptions were included as operation permit exemptions. No significant new exemptions were added.

There is the possibility of controversy concerning: 1) the requirement to affirmatively claim the exemption from permitting, 2) the \$800 exemption fee for reviewing construction permit exemption and 3) the requirement that exempt facilities that use emission control devices to monitor those control devices in accordance with current air rule requirements.

**RECOMMENDATION:** It is recommended that the Board adopt the proposed rule revisions in AM-09-06.

**LIST OF ATTACHED MATERIALS:**

No <input type="checkbox"/>	Fiscal Estimate Required	Yes <input checked="" type="checkbox"/>	Attached
No <input checked="" type="checkbox"/>	Environmental Assessment or Impact Statement Required	Yes <input type="checkbox"/>	Attached
No <input type="checkbox"/>	Background Memo	Yes <input checked="" type="checkbox"/>	Attached

**APPROVED:**

\_\_\_\_\_/S/\_\_\_\_\_  
Acting Bureau Director, Kevin Kessler

\_\_\_\_\_/07/19/2006\_\_\_\_\_  
Date

\_\_\_\_\_/S/\_\_\_\_\_  
Administrator, Al Shea

\_\_\_\_\_/07/19/2006\_\_\_\_\_  
Date

\_\_\_\_\_/S/\_\_\_\_\_  
Secretary, Scott Hassett

\_\_\_\_\_/07/20/2006\_\_\_\_\_  
Date

cc: Amy Arthur - AD/5  
Carol Turner - LS/5

K. Kessler - AM/7  
R. Eckdale - AM/7 (6)

Steve Dunn - AM/7  
Marcia Penner - LS/5

DATE: July 19, 2006

FILE REF: 4533

TO: Natural Resources Board Members

FROM: Scott Hassett, Secretary

SUBJECT: Background Memo on Request for Adoption of Order # AM-09-06, pertaining to the revisions of chs. NR 406, 407 and 410, Wis. Adm. Code, for expanding the current exemptions from air permit requirements.

*1. Why is this rule being proposed?*

*a. What event or action triggered the proposal?*

In 2003, s. 285.60(6)(b), Stats., was created as part of 2003 Wisconsin Act 118. This law requires the Department to exempt minor sources from the requirement to obtain air permits if emissions from the source do not present a significant hazard to public health, safety, welfare or to the environment. Thus, the Department is proposing the changes to chs. NR 406, 407 and 410 to meet this statutory requirement.

*b. What issues are addressed by this rule?*

The Department has examined current permit exemptions in light of the requirements of s. 285.60(6)(b), Stats., and believes that an expansion of those exemptions is required under the statute. Therefore, the Department is proposing exemptions at emission levels which it believes do not represent a significant hazard to public health, safety, welfare or to the environment.

*2. Summary of the Rule*

The rule proposal provides exemptions from construction and operation permitting requirements for facilities which have less than 10 tons/year of actual emissions of criteria pollutants (particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds), and which are not subject to federal New Source Performance Standards or federal air pollution requirements for hazardous air pollutants. This exemption needs to be claimed by the facility owner or operator if the facility is required to submit an air emission inventory report.

For facilities with higher levels of emissions, projects involving construction, modification, reconstruction, relocation or replacement which have less than 10 ton/year actual emissions of criteria pollutants and which meet the other exemption criteria would be exempt from obtaining a construction permit prior to undertaking the project. However, the facility owner or operator would still need to apply for an operation permit revision for the project. The proposal includes an \$800 fee for each construction permit exemption to defray engineering review costs incurred by the Department when evaluating whether a source qualifies for the exemption. The rule requires the Department to respond within 20 business days of receipt of the exemption notification. This time period is identical to that required for construction permit applications.

Lastly, two additional activities are proposed to be added to the current list of activities which are excluded from being a modification. These activities are certain changes to process lines emitting volatile organic compounds and conversion of small boilers to use an alternate clean fuel.

*3. How does this proposal affect existing policy?*

This proposal implements new State policy on air permits as reflected in s. 285.60(6)(b), Stats.

*4. Hearing Synopsis.*

Three public hearings were held: one on June 27 in Stevens Point, one on June 28 in Madison, and one on June 29 in Milwaukee. Five persons attended the hearings. Two testified in support of some elements and in opposition to other elements. The other three attended but did not testify.

The Department received written comments from the following groups:

- Aggregate Producers of Wisconsin
- Kohler Company
- Printing Industries of Wisconsin and Specialty Graphic Imaging Association International
- Wisconsin Manufacturers and Commerce
- Wisconsin Paper Council
- Wisconsin Cast Metals Association

A summary of the comments and the Department's response to the comments is attached to this background memo.

*5. Changes made to the plain language analysis of the rule.*

The section of the plain language analysis of the rule that compares the proposed exemption rules with those in adjacent states was expanded to include additional information about the programs in Minnesota and Michigan.

*6 Information on environmental analysis.*

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis would not be needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not significantly affect energy usage and normally does not involve unresolved conflicts in the use of available resources.

*7. Final Regulatory Flexibility Analysis.*

The proposed rule will affect a number of small businesses. The proposal will exempt a number of small businesses from obtaining air pollution permits. This will, in general, lower their compliance costs and reporting requirements. The construction permit exemption for projects will benefit larger businesses with higher levels of emissions.

*7A. Identify and discuss why the rule includes or fails to include any of the following methods for reducing the impact on small business.*

- 1. Less stringent compliance or reporting requirements.*

This rule reduces reporting requirements. By exempting facilities from the need to obtain a permit, it also exempts them from permit-related reporting requirements that they would otherwise have to fulfill. For example, they will no longer need to submit annual compliance certification reports, as is required of permitted facilities.

The only new reporting requirement in the rule is the requirement that sources which are already required to submit an annual emission inventory also submit a one-time claim that they are exempt from permitting. This claim is expected to be a check-off box on the emission inventory form. In response to comments, the rule was revised to eliminate the exemption claim requirement from businesses which do not report to the air emission inventory. It should be noted that the use of this exemption is optional. It is an election on the part of the facility owner to limit future actual emissions to levels that are below the exemption threshold. The exemption claim notifies the Department that the facility has elected to live under the “emission cap” instead of obtaining the otherwise required operation and construction permits.

The compliance demonstration requirements are less stringent for facilities electing to use this exemption. Unlike a traditional permit which spells out all the specific applicable requirements and their compliance demonstration methods, under the exemption rule, the owner or operator is responsible for conducting monitoring and maintaining records “sufficient” to demonstrate compliance with the exemption rule. There is flexibility in how the owner or operator decides to make this demonstration. The only specific compliance demonstration requirement relates to the use of pollution control devices where the monitoring methods that apply to the operation and maintenance of all control devices also apply to those used by exempt facilities. Since the control devices reduce the emissions that otherwise would be emitted into the ambient air, it is extremely important that they be well maintained and operated. Under the exemption rule, compliance demonstration records are not submitted to the Department, but must be maintained on site for 5 years.

*2. Less stringent schedules or deadlines for compliance or reporting.*

The only reporting deadline is the exemption claim which would be filed one time at a date to be determined by the Department. The actual date depends on the effective date of the rule.

*3. Consolidation or simplification of compliance or reporting requirements.*

The proposed rule does not change compliance requirements for any source. However, as discussed in the response to A.1. above, the benefit of being exempt from permitting is that the permit-related compliance and reporting requirements no longer apply. This provides more flexibility to the facility and eliminates the requirement for annual compliance certification reporting. Other than emission inventory reporting, which is required of all facilities whose actual emissions exceed the threshold levels, an exempt facility is not required to submit any reports to the Department. It simply needs to maintain its records on site.

For projects exempt from construction permitting at larger sources, the rule only eliminates the need for the construction permit and does not change or add any other requirements.

*4. Establishment of performance standards in lieu of design or operational standards*

The proposed rule change does not create additional design or operational standards.

*5. Exemption from any or all requirements of the rule.*

The proposed rule is adding additional exemptions which may apply to some small businesses.

*7B. Issues raised by small business during the rule hearings, changes made as a result and reasons for rejecting alternatives suggested by small business.*

Comments were submitted by Wisconsin Manufacturers and Commerce (WMC) and the Printing Industries of Wisconsin (PIW) on behalf of their members. WMC commented that exempt facilities would be required to comply with the same recordkeeping, monitoring and reporting requirements as facilities covered under a traditional permit. Both WMC and PIW opposed the exemption claim requirement as an onerous paperwork burden.

In response to comments, the rule was revised so that facilities which are not required to submit an air emission inventory report are not required to claim the permit exemption. The intent is not to create a new administrative burden for facilities that elect to use the permit exemption. In order to continue to streamline the process, the claim is a one time claim that is expected to be a check off box on the existing emission inventory form. It will not require any additional work or the necessity to file a claim prior to taking any construction activity.

The rule does not impose any additional recordkeeping, monitoring or reporting requirements and in fact, relieves exempt facilities from those requirements that are permit-related. Other than requiring compliance monitoring of pollution control devices in conformance with administrative code requirements, the rule does not specify recordkeeping, monitoring or reporting requirements. It does require that the compliance monitoring records be sufficient to demonstrate compliance and that they be maintained on site.

*7C. Reports required by the rule and estimated cost of preparation.*

The only “report” required by the rule is a one-time exemption claim that facilities who are already required to submit an emission inventory report must claim. This is expected to be a check off box on the inventory reporting form. It will not require any additional work on the part of the facility and its cost will be minimal.

Businesses using the construction permit exemption are required to submit a request to revise their operation permit. This is no different from current requirements.

*7D. Measures or investments needed to comply with the rule.*

There are no measures or investments needed to comply with the rule.

*7E. Additional cost to the state for administering or enforcing a rule which includes any methods identified in A.*

The proposed Rules allow for small emission sources to be exempt from all permitting requirements and for larger sources to be exempt from construction permitting requirements. The elimination of all permit requirements for small sources will reduce Department costs for writing permits and for storing and reviewing compliance certification reports. The construction permit exemption is estimated to allow for 40 projects per year that currently require a construction permit to be exempt from that requirement. However, these projects will still require the Department to issue an operation permit or to revise an existing operation permit.

Based on a loss of 40 construction permits per year, and an average cost per construction permit of \$6,000, the revenue loss would be \$240,000/year. With the proposed \$800 exemption fee, the gain in fees would be \$32,000/year (40 exemptions at \$800 per exemption) for a net loss of funds of \$208,000/year.

The elimination of the permitting requirement for small sources should have little or no effect on program revenue. Additionally, any reduced workload for permit writing will likely be shifted into ensuring these sources are in compliance with Air requirements.

*7F. Impact on public health, safety and welfare caused by any methods identified in A.*

There should be no impact on public health, safety and welfare as the methods identified in A. do not change any of the applicable requirements. Certain facilities and projects are exempted from permitting but are not exempt from complying with air emission standards.

Department of Natural Resources Responses to Public Comments on Proposed Revisions to chs.  
NR 406, 407 and 410, Wis. Adm. Code.  
Board Order No. AM-09-06  
July 18, 2006

The Natural Resources Board authorized public hearings on the proposed air permit exemption rules at its April 2006 meeting. These public hearings were held on June 27<sup>th</sup> in Stevens Point, June 28<sup>th</sup> in Madison and June 29<sup>th</sup> in Milwaukee. Two persons testified, both in partial support and in partial opposition to portions of the proposed rule changes.

Comments on these proposed rules (Board Order No. AM-09-06) were received from the following groups. Comments at the hearings were received from WMC and PIW. The written comments submitted by these groups included all of the comments made at the public hearing:

- Aggregate Producers of Wisconsin (APW)
- Kohler Company (K)
- Printing Industries of Wisconsin (PIW)
- Wisconsin Manufacturers and Commerce (WMC)
- Wisconsin Paper Council (WPC)
- Wisconsin Cast Metals Association (WCMA)
- Legislative Rules Clearinghouse (LRC)

## COMMENTS AND RESPONSES

The comments identified in this section will generally follow the order they were identified in WMC's comments. This method was chosen because WMC submitted the most comments. Comments not submitted by WMC but only by other groups will be addressed last.

**1. Comment:** Facilities that are exempt [from permitting requirements] under this rule are required to comply with the same recordkeeping, monitoring and reporting requirements as sources covered under a traditional permit [WMC]. **Response:** It is not clear from this comment which exemption (the exemption from all permitting or the exemption from construction permitting only) is being addressed here. For the purpose of this response, the Department will assume this applies to the exemption from all permitting.

The purpose of this rule and these exemptions is to exempt sources from permitting requirements and not other applicable requirements. This is what s. 285.60(6)(b), Stats., requires the Department to do and what the Department is doing with this rule package. This is true of all other permit exemptions which are presently in chs. NR 406 and NR 407, and also true of the Minnesota permit exemptions cited by this commenter on numerous occasions in their written comments. In Minnesota's guidance for permit applicability it is made clear that being exempt from the requirement to obtain a permit does not exempt one from any other potentially applicable regulatory requirements.

The operation permit exemption requires sources which are already required to submit an annual emission inventory report to the Department to continue to do so. This requirement already applies to sources which may or may not need permits and is based solely on actual emissions. Additionally, the final rule requires sources which use emission control devices (and only sources which use control devices) such as baghouses and incinerators to monitor these devices and to keep records of the device monitoring. The Department believes this is necessary because sources which use control devices are potentially large sources of emissions which, if not properly controlled, could represent a significant risk to human health or the environment. For

example, a baghouse typically achieves a minimum of 99% control efficiency for particulate matter emissions. Assuming a source emits only 5 tons of particulate matter, the potential emissions of particulate matter are 500 tons/year if the baghouse is not working properly.

Additionally, the rule does not require any exempt source to submit a compliance certification report as is required of any permitted source. Therefore, the Department does not concur that this is not a lessening of recordkeeping or reporting requirements.

**2. Comment:** Other States have more meaningful exemption to air permit requirements. For example, Minnesota presumes sources are exempt from permitting if their potential to emit is less than 100% of major source threshold [WMC]. **Response:** As discussed in the Rule Analysis portion of Board Order for the proposed rule, the Department believes that the construction permit exemptions allowed in Wisconsin are, in general, broader than those provided by neighboring states. For a more complete analysis of the Minnesota Program, please see the Rule Analysis for this rule.

**3. Comment:** Support the use of actual emission based exemptions and the proposed exclusions from modifications in the rule [WMC, WCMA]. **Response:** None required

**4. Comment:** The proposed actual emissions exemption threshold should be increased to 25 tons/year [WMC, APW]. **Response:** The Department believes that the 10 ton/year actual threshold proposed in this rule is appropriate. Assuming this rule is eventually adopted, the Department will have a permit exemption available for sources with emissions under 10 tons/year and will also soon have a registration operation permit available for sources with emissions under 25 tons/year. As previously discussed, sources which claim this exemption, and not one of the other numerous exemptions in the Rules for specific source categories or for sources without emission controls which have low emissions, are likely to have the potential to emit very large quantities of emissions if not properly controlled.

**5. Comment:** The Department should add exemptions based on the source's potential to emit such as those that exist in Minnesota [WMC]. **Response:** In developing the proposed rule, the Department worked for many months with interested parties, including representatives of WMC. Prior to these comments, no significant discussion occurred and no proposal was received by the Department for basing exemptions on the Minnesota potential to emit thresholds. That being said, the Department believes that the exemptions provided in Wisconsin are in general, broader than those provided by neighboring states.

Additionally, as discussed in the Rule Analysis, the term "potential to emit" as used in the Minnesota program is equivalent to the term "maximum theoretical emissions" in the Wisconsin program. In Wisconsin, sources with low maximum theoretical emissions are already exempt under the existing Rules from obtaining construction or operation permits

**6. Comment:** The Department should include an exemption for small boilers that is the same as that in Michigan [WMC]. **Response:** In developing the proposed rule, the Department worked for many months with interested parties, including representatives of WMC. During this time, the Department asked numerous times for any suggestions for specific exemptions which could be analyzed and possibly included in the proposed rule. No suggestions were received. The Department is willing, in the future, to examine this request, but believes there is insufficient time to examine the request and that adding such a provision would likely require a second public comment period as additional exemptions of this sort were not proposed with the original rule.



7. **Comment:** We are opposed to having to submit a “claim of exemption” [WMC, APW, PIW].

**Response:** The proposed rule requires that all sources which want to claim exemption from all permitting requirements notify the Department of such a claim. The Department is proposing to amend the proposed rule such that only sources which are required to report to the air emission inventory be required to make such a claim. This is consistent with the intent of the original rule proposal. The Department anticipates that such a claim be made by simply marking a box on the air emission inventory report following promulgation of the rule. The Department does not believe this is a significant burden for any source or requires any expertise. This claim is necessary because sources not required to obtain a permit are billed at a flat rate and not per ton of emissions and so that the Department will know which state operation permit applications no longer need to be reviewed. Without such an initial claim, the Department will be unable to properly bill the affected sources and will still need to contact each source to determine if the state operation permit needs to be reviewed and issued.

Additionally, the use of this exemption is optional for all sources which meet the applicability requirements. A source which could claim this exemption is not required to use this exemption and limit its emissions. This again reinforces the need for an exemption claim for sources which want to use this exemption.

The proposed rules also requires sources which are required to have operation permits to submit a claim of exemption from construction permitting when the operation permit revision requested is submitted. The Department has already developed and amended revision request form in which a box is marked for claiming exemption from construction permitting under these provisions.

Since submittal of the operation permit revision request is already required by rule, the Department does not believe this adds any additional burden to the affected sources.

Additionally, without a claim of exemption from construction permitting, the operation permit revision reviewer would need to contact the applicant to determine why the proposed change is exempt from construction permitting. Thus, the requirement to claim the exemption will add to the efficiency of the program without adding any additional work for affected facilities.

8. **Comment:** Operation permit revisions are not required to be reviewed within any specified time period and sources cannot operate until such requests have been reviewed and approved [WMC]. **Response:** Section NR 407.13, Wis. Adm. Code, requires the Department to issue the majority of significant revision requests within 9 months after receipt of a complete application. Sources which submit a complete application for a significant revision may construct the units covered under that revision request prior to the Department approving the revision

9. **Comment:** The Department should put in place deadlines for reviewing these operation permit revision requests and endeavor to act on requests for smaller sources in an expeditious manner [WMC].

**Response:** The Department is planning to act on these revision requests (all such requests, not just those claiming exempting from construction permitting under this rule proposal) in as expeditious fashion as time and resources allow. The Department does not see any merit in establishing more expeditious timelines for “smaller sources” but is willing to discuss the possibility of reviewing smaller source applications more quickly than those for larger emitters (i.e. small sources would always be given priority).

10. **Comment:** The draft rule creates new monitoring and recordkeeping requirements and also directs sources to undertake any other monitoring or recordkeeping found in the rules that may be applicable. The DNR should drop any monitoring or recordkeeping requirements from the rule [WMC, APW].

**Response:** The only recordkeeping and monitoring requirements in the rule are that sources monitor control equipment in accordance with the procedures established in s. NR

439.055, Wis. Adm. Code. This Code section establishes minimum control device monitoring requirements for sources that are not subject to more stringent requirements under other rules. The Department believes such monitoring is appropriate because, as mentioned in response to comment 1., sources using control devices to limit actual emissions are potentially very large sources of air emissions if the control device is not operating properly. The purpose of the monitoring is to allow a source to demonstrate that the control device was operating and operating with an acceptable efficiency.

The rule does not establish any other reporting or monitoring requirements. However, this is a permit exemption rule and not an exemption from all requirements of the ch. NR 400 series or other Statutory or Federal requirements. Thus, if the facility is subject to some other recordkeeping or monitoring requirements to demonstrate compliance with those other requirements, then the recordkeeping or monitoring required by those requirements must be met by the source.

11. **Comment:** Ch. NR 438, Wis. Adm. Code, (air emission inventory reporting) is still applicable to sources under this rule [WMC, APW]. **Response:** The purpose of this rule proposal is to provide an exemption from permitting requirements. It is not and was never intended to provide an exemption from air emission inventory requirements.

12. **Comment:** The DNR should consider alternative emission thresholds for hazardous air pollutants than those in NR 445 [WMC]. **Response:** The emission thresholds established in NR 445 apply to all sources in the state. Additionally, the emission thresholds were established to protect human health from significant harm from exposure to hazardous air pollutants. Also, unlike other sources, exempt sources need only maintain their actual emissions below NR 445 thresholds as opposed to maintaining potential emissions below NR 445 thresholds for other sources. The rule was revised to include the “incidental emitter” provisions of s. NR 445.11 which narrows the scope of the rule to certain processes and substances of concern.

13. **Comment:** May sources presently covered by permit ask to have their permit revoked and then comply with the exemption requirements only [WMC]? **Response:** In general, this should be allowable. There may be permits that have been issued for other purposes such as PSD/NAA major source review avoidance which cannot be revoked.

14. **Comment:** We object to the \$800 fee for reviewing the construction permit exemption and request a fixed turnaround time for reviewing such requests [WMC, APW, PIW]. **Response:** The Department believes this fee is both reasonable and necessary for reviewing this exemption. The exemption review will require Department work-time and will require a response from the Department as to whether the project is exempt from construction permit requirements. Additionally, the proposed fee is substantially less than the minimum construction permit review of \$2,300 and the average construction permit review fee of \$8,000. Finally, in order to ensure a quick turnaround of such requests, the Department is amending the rule to require a Department response within 20 business days of receipt of the exemption request. This time period is identical to that required for construction permits.

15. **Comment:** Are facilities which are exempt from obtaining an operation permit under this rule also exempt from obtaining a construction permit [PIW]? **Response:** Yes, the rule states that such facilities are exempt from construction permitting and need not claim the construction permit exemption as long as they maintain actual emissions below 10 tons/year for criteria pollutants and meet the other applicability requirements in the proposed rule.

16. **Comment:** Clarify NR 406.04(2m) such that facilities operating under a general or registration operation permit are exempt from construction permit requirements [WMC, APW].

**Response:** The Department believes this is clear in the rule. Assuming the facility complies with the operation permit requirements and is not subject to major source review, the facility is exempt from construction permitting. Additionally, this general exemption is outside the scope of this rule proposal. If further clarification is needed, the Department is willing to consider such changes for future rule making proposals.

17. **Comment:** Does s. NR 406.04(1)(zi)2. apply to the entire facility or to units being constructed, modified, or reconstructed as part of a single project [K]. **Response:** The emission thresholds only apply to the emissions units being constructed, modified, replaced, relocated and reconstructed as part of a single project.

18. **Comment:** Why is the 12-month rolling average of 1,666 lb/month used rather than 12-month 10 ton/year limitation in s. NR 406.04(1)(zi)2.a. [K]? **Response:** This limitation is used to ensure that the emission cap is practicably enforceable.

19. **Comment:** The operation permit revision request should be submitted prior to commencing operation and not prior to commencing construction [K]. **Response:** Under existing rules, ch. NR 407, Wis. Adm. Code, requires that the operation permit revision request be submitted prior to commencing construction. This rule does not change this requirement. Placing the requirement in ch. NR 406 is to serve as a reminder of this already existing requirement.

20 **Comment:** Does the claim of exemption from construction need to be submitted prior to commencing construction [K]? **Response:** Yes, this claim should be submitted along with the operation permit revision request.

21. **Comment:** The exclusion from modification in NR 406.04(4)(i) should be expanded to include the use of biofuels [WPC]. **Response:** Biofuels which meet the requirements to be considered distillate oil are exempted under this provision. The Department is willing to examine excluding certain biofuels under similar rule provision, but is presently unaware of what biofuels would need a similar exemption.

22. **Comment:** The phrase “as a result of the project” should be added to the end of NR 406.04(1)(zi)4 [WPC]. **Response:** This change will be made as it is consistent with the intent of the provision.

23. **Comment:** The rule should specify a time when the operation permit revision is due under NR 406.04(1)(zi)5. [WPC]. **Response:** The present rule requires submittal of the revision application prior to commencing construction. No change is proposed to be made.

All comments submitted by the LRC have been addressed in the final rule.

## Fiscal Estimate — 2005 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 406, 407 and 410

### Subject

Proposed changes to chs. NR 406, 407 and 410 to exempt certain sources from permit requirements.

### Fiscal Effect

State: ☐ No State Fiscal Effect  
☐ Indeterminate

Check columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation    ☐ Increase Existing Revenues  
☐ Decrease Existing Appropriation    ☒ Decrease Existing Revenues  
☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb  
within agency's budget.

☐ Yes    ☐ No

☒ Decrease Costs

Local: ☐ No Local Government Costs

☐ Indeterminate

1. ☐ Increase Costs  
☐ Permissive    ☐ Mandatory  
2. ☒ Decrease Costs  
☐ Permissive    ☐ Mandatory

3. ☐ Increase Revenues  
☐ Permissive    ☐ Mandatory  
4. ☐ Decrease Revenues  
☐ Permissive    ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns    ☐ Villages    ☒ Cities

☒ Counties    ☐ Others

☒ School Districts    ☐ WTCS Districts

### Fund Sources Affected

☐ GPR    ☐ FED    ☒ PRO    ☐ PRS    ☐ SEG    ☐ SEG-S

### Affected Chapter 20 Appropriations

s. 20.370 (2)(ci)

### Assumptions Used in Arriving at Fiscal Estimate

The proposed rules allow for small emission sources to be exempt from all permitting requirements and for larger sources to be exempt from construction permitting requirements. The elimination of all permit requirements for small sources will reduce Department costs for writing permits and for storing and reviewing compliance certification reports. The elimination of the permitting requirement for small sources should have little or no effect on program revenue. The construction permit exemption is estimated to allow for 40 large source projects per year that currently require a construction permit to be exempt from that requirement. However, these projects will still require the Department to issue an operation permit or to revise an existing operation permit. Based on a loss of 40 construction permits per year, and an average cost per construction permit of \$6,000, the revenue loss would be \$240,000/year. With the proposed \$800 exemption fee, the gain in fees would be \$32,000/year (40 exemptions at \$800 per exemption) for a net loss of funds of \$208,000/year. Any reduced workload for permit writing will likely be shifted into ensuring these sources are in compliance with Air requirements.

### Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

## Fiscal Estimate Worksheet — 2005 Session

Detailed Estimate of Annual Fiscal Effect

☐ Original      ☐ Updated  
☐ Corrected      ☐ Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 406, 407 and 410

**Subject**

Proposed changes to chs. NR 406, 407 and 410 to exempt certain sources from permit requirements.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		( FTE )	( FTE )
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS		32,000	- 240,000
SEG/SEG-S			-
Total State Revenues		\$	\$ -

### Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$	\$
Net Change in Revenues	\$ -208,000	\$

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **renumber** NR 406.02(1) and 406.04(4)(h), to **amend** NR 410.03(1)(d) and to **create** NR 406.02(1), 406.04(1)(zh), (1q), (4)(h) and (i), 407.03(1m) and 410.03(1)(f) relating to air pollution permit exemptions and air pollution permit exemption fees, and affecting small business.

AM-09-06

Analysis Prepared by the Department of Natural Resources

**Statute interpreted:** s. 285.60(6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

**Statutory authority:** ss. 285.11(1) and (6) and 285.60(6), Stats.

**Explanation of agency authority:** The Department has had the authority under s. 285.60(6)(a), Stats., to exempt stationary sources from permitting requirements if potential emissions do not present a significant hazard to public health, safety or welfare or to the environment. In 2003, s. 285.60(6)(b), Stats., was created and requires the Department to exempt minor sources from the requirement to obtain air permits if emissions from the source do not present a significant hazard to public health, safety or welfare or to the environment.

**Related statute or rule:** Chapters NR 406 and 407, Wis. Adm. Code.

**Plain language analysis:** The rule proposal provides for sources that have less than 10 tons/year of actual emissions of criteria pollutants (particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds), and which are not subject to Federal air pollution requirements for hazardous air pollutants or new source performance standards, to be exempt from all permitting requirements.

For sources with emissions above these thresholds, projects undertaken at the facility that will meet the aforementioned criteria would be exempt from obtaining a construction permit prior to undertaking the project. The facility owner/operator would still need to apply for an operation permit for the project, but construction of the sources included in the project would be allowed. The proposal includes an \$800 fee for each construction permit exemption to defray engineering review costs incurred by the Department when evaluating whether a source qualifies for the exemption.

The Rule also includes provisions to exclude certain fuel changes at smaller boilers from being considered a modification of the boiler. The effect of this change is that boilers which switch to a clean fuel or convert from one clean fuel to another will not be subject to more stringent new source requirements such as more restrictive opacity limitations. Lastly, the rule also excludes sources which are subject to ch. NR 424 emission control requirements from construction permit review when they seek to change the control requirements required under ch. NR 424 without increasing potential VOC emissions from the affected source.

**Summary of, and comparison with, existing or proposed federal regulation:** A comparable federal regulation does not exist. The Federal Clean Air Act requires States to have a minor source construction permit program which allows for preconstruction review of new and modified sources of air pollution. The purpose of this program is to ensure that ambient air quality standards are protected.

The Clean Air Act also requires that each state manage an operation permit program for major sources of air pollution. The criteria for being a major source of air pollution is 100 tons/year of criteria pollutant emissions or being defined as a major Federal hazardous air pollution source.

**Comparison with rules in adjacent states:** All the states within EPA Region 5 manage a minor source construction and operation permit program. Some of these programs appear to be more “stringent” than Wisconsin’s program, while others appear to be less stringent. Comparisons between programs are difficult due to the varying ways sources may be exempt and how programs are funded. Based on a review done by the Air Management program, it appears that Wisconsin’s program offers more exemptions than most Region V States.

Wisconsin: Chapters NR 406 and 407 establish two types of exemptions from construction and operation permitting requirements. The first of these, specific exemptions, apply to specific processes such as small boilers, crematoriums and small coating operations. The second type, general exemptions, are based on the maximum source emissions and whether the source is subject to any Federal emission control requirements.

Minnesota: Exemptions from operation permits are based solely on the facility’s potential to emit. The term “potential to emit” for determining permit applicability is identical to the term “maximum theoretical emissions” used by the Department in its general permit exemptions. The Minnesota exemption thresholds are somewhat higher than those in Wisconsin for all pollutants. However, Minnesota does not provide for any specific exemptions from permitting requirements such as those available in Wisconsin for grain processing, storage facilities and other categories of sources. Additionally, Minnesota does not provide for the actual emissions based exemptions currently available in Wisconsin for coating and graphic arts operations nor does it provide any exemptions similar to the exemption proposed in this rule package for facilities using control equipment to limit actual emissions. Thus, for some smaller uncontrolled facilities (especially facilities not in coating or graphic arts industries) Minnesota may provide more extensive permit exemptions. But, for other types of facilities, it appears that Wisconsin has more extensive permit exemptions.

For construction permits, the Minnesota program appears to be based on changes in potential to emit, which may be limited by control devices in certain cases. The reviews may vary and are identified as insignificant, minor, moderate or major. For major (PSD) sources, any change requiring synthetic minor conditions must go through the most detailed level of review (major). Again, the emission increase thresholds are generally above those in Wisconsin, but no exemptions exist for specific source categories or for sources on an actual emission basis.

Michigan: Exemptions are mainly based on specific exemptions for certain processes/emissions sources. Examples include small boilers and small printing and coating operations. There is also an exemption for facilities with low emissions with a threshold significantly lower than that being proposed in this Rule package. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Illinois: Exemptions are based on specific exemptions for certain processes/emission sources. Examples include small boilers and small printing and coating operations. In general, the exemptions do not appear to be as broad as those currently available in Wisconsin or those being proposed in this Rule package.

Iowa: Exemptions are based on a limited number of identified processes and operations that have very low emission rates (lower than in this rule proposal).

**Summary of factual data and analytical methodologies:** Rule revisions to chs. NR 406, 407 and 410 are in response to s. 285.60(6)(b), Stats., which was part of 2003 Wisconsin Act 118. The law requires that small sources of emissions that do not present a significant hazard to public health, safety or welfare or to the environment be exempted from permit requirements.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** The proposed rule revisions will require Department resources to implement. The Department is proposing an addition to its construction permit fee schedule contained within chapter NR 410 to fund this work effort. A proposed fee of \$800 is included and is based upon the existing fee structure for Department review of another existing construction permit exemption. Businesses that choose to take advantage of the regulatory flexibility will have reduced permit fees in the long run because many projects that had previously required a construction permit will not be reviewed under that program under the proposed rule revisions.

**Anticipated costs incurred by private sector:** Although the proposed rule revision requires a fee of \$800 for one type of construction permit exemption evaluated under these rules, this cost is less than that which would be incurred if the source were required to obtain a construction permit.

**Effect on small business:** These proposed rule revisions should lower compliance costs for many small businesses.

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SECTION 1. NR 406.02(1) is renumbered NR 406.02(1m).

SECTION 2. NR 406.02(1) is created to read:

NR 406.02(1) “Clean fuel” means distillate oil, as defined in s. NR 440.205(2)(h), with a sulfur content less than 0.05% by weight, natural gas or propane.

SECTION 3. NR 406.04(1)(zh) is created to read:

NR 406.04(1)(zh)1. Any construction, modification, replacement, relocation or reconstruction of an emissions unit at a stationary source which is exempt from the requirement to obtain an operation permit under s. NR 407.03(1m), provided the stationary source still qualifies for the exemption under s. NR 407.03(1m) after completion of the proposed construction, modification, replacement, relocation or reconstruction.

2. Construction of a new facility if the facility will be exempt from the requirement to obtain an operation permit under s. NR 407.03(1m) after completion of the proposed construction.

SECTION 4. NR 406.04(1q) is created to read:

NR 406.04(1q) SOURCES EXEMPT BASED ON CONTROLLED ACTUAL EMISSIONS. Any emissions unit constructed, modified, replaced, relocated or reconstructed at a stationary source where all of the following criteria and requirements are met:



1. The owner or operator of the stationary source has a facility-wide operation permit under ch. NR 407 or has submitted a timely and complete application for a facility-wide operation permit.

2. Actual emissions from all of the constructed, modified, replaced, relocated and reconstructed emissions units do not exceed any of the following levels:

a. 1,666 pounds in any month averaged over any consecutive 12-month period for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM<sub>10</sub>, carbon monoxide and volatile organic compounds.

b. 10 pounds in any month averaged over any consecutive 12-month period for lead.

3. None of the emission units constructed, modified, replaced, relocated or reconstructed requires a new BACT or LAER determination under ch. NR 445 as a result of the new project.

4. None of the emission units constructed, modified, replaced, relocated or reconstructed are subject to new permitting requirements under ch. NR 405 or 408 as a result of the new project.

5. The owner or operator of the stationary source submits to the department a complete application for an operation permit revision, or an updated application for an operation permit, which includes each new, modified, replaced, relocated or reconstructed emissions unit, prior to commencing construction, modification, replacement, relocation or reconstruction and does all of the following:

a. In the operation permit revision application, or updated operation permit application, proposes monitoring of any control equipment used to limit actual emissions from any emissions unit being constructed, modified, replaced, relocated or reconstructed in accordance with the monitoring requirements in s. NR 439.055.

b. Commences monitoring of any control equipment as proposed in subd. 5.a., and maintains any records necessary to demonstrate compliance with any applicable emission limitation, upon startup of any newly constructed, modified, replaced, relocated or reconstructed emissions unit.

6. The owner or operator of the source submits to the department a claim of exemption from construction permitting requirements. The exemption claim shall identify the emission units which are

being constructed, modified, replaced, relocated or reconstructed. The department shall respond to the claim of exemption submittal within 20 business days after receipt of the claim.

7. Any newly constructed emission unit is not subject to an emission limitation under section 111 or 112 of the Act (42 USC 7411 or 7412). Any modified, replaced, relocated or reconstructed emissions unit does not trigger any new emission limitation or other requirement for the emission unit under section 111 or 112 of the Act (42 USC 7411 or 7412).

**Note:** The application for an operation permit or operation permit revision required under this section will be evaluated by the department pursuant to the permit approval criteria in ss. 285.63 and 285.64, Stats. Application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: operation permits.

SECTION 5. NR 406.04(4)(h) is renumbered NR 406.04(4)(j)

SECTION 6. NR 406.04(4)(h) and (i) are created to read:

NR 406.04(4)(h) *Change to process lines emitting VOCs.* A change in a method of operation of a process line subject to s. NR 424.03(2)(c) that meets all of the following criteria:

1. The change does not result in annual potential VOC emissions from the process line which exceed the currently allowed annual potential VOC emissions based on conditions established under s. NR 424.03(2)(c).

2. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412).

**Note:** The permittee shall continue to comply with the conditions established under s. NR 424.03(2)(c) in its construction or operation permit until the permit is revised.

(i) *Change to use a clean fuel.* A change to an external combustion furnace to allow for the combustion of a clean fuel that meets all of the following requirements:

1. The external combustion furnace has a maximum heat input capacity of no greater than 10 mmBtu/hour if the ability to combust distillate oil is being added and 25 mmBtu/hour if the ability to combust natural gas or propane is being added.

2. The use of the new fuel does not cause or exacerbate the exceedance of any ambient air quality standard or increment in ch. NR 404.

3. The change does not trigger a requirement under section 111 or 112 of the Act (42 USC 7411 or 7412).

SECTION 7. NR 407.03(1m) is created to read:

NR 407.03(1m) FACILITIES EXEMPT BASED ON ACTUAL EMISSIONS. Any facility is exempt from the requirement to obtain an operation permit where all of the following criteria and requirements are met:

1. The actual emissions of each air contaminant from the facility do not exceed any of the following levels:

a. 10 tons in any calendar year for each of the following air contaminants: particulate matter, nitrogen oxide, sulfur dioxide, PM<sub>10</sub>, carbon monoxide and volatile organic compounds.

b. 0.5 tons in any calendar year for lead.

c. Any stack-appropriate thresholds for emissions points in columns (c), (d), (e) and (f) of Table A, B or C of ch. NR 445. If the facility is a source of incidental emissions under s. NR 445.11, this subdivision only applies to emissions of air contaminants which are listed as substances of concern in Table E of ch. NR 445.

2. The facility is not subject to a standard under section 111 or 112 of the Act (42 USC 7411 or 7412).

3. The owner or operator has submitted to the department an operation permit exemption claim. The claim shall be submitted on department approved forms and to a location designated by the department. A claim under this subdivision is not required if the facility is exempt from the requirement to submit an air emission inventory report under s. NR 438.03(1)(a).

4. The owner or operator conducts monitoring and maintain records sufficient to demonstrate compliance with the requirements of this paragraph, including the calculation of annual facility-wide emissions. These records shall be maintained on site for at least 5 years, unless a longer period is required by statute or rule.

5. If a control device is used to limit actual emissions, the owner or operator uses a compliance monitoring method which is identified in s. NR 439.055.

**Note:** The owner or operator is responsible for complying with all applicable requirements in chs. NR 400 to 499.

SECTION 8. NR 410.03(1)(d) is amended to read:

NR 410.03(1)(d) Any person who applies for a construction permit for a direct source shall submit a \$1,350 fee with the application. This fee may not be refunded unless the department determines that a permit is not required. When a fee is required under par. (b) or (f), only the amount not required to cover the fee will be refunded.

SECTION 9. NR 410.03(1)(f) is created to read:

NR 410.03(1)(f) Any person submitting a claim for a construction permit exemption under s. NR 406.04(1q) shall pay a fee of \$800.

SECTION 10. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin  
Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)